

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. NO. 3071 OF 2007.

DATE OF DECISION: September 17, 2007.

Smt. Darshna Devi Rastogi widow of Shri Sarwan Kumar Rastogi, resident of 3862, Kacha Bazar, Sadar Bazar, Ambala Cantt.

Vs.

Shri Neeraj Gulati son of Shri Jagdish Lal Gulati, resident of 3859, Kacha Bazar, Sadar Bazar, Ambala Cantt.

Before: Hon'ble Mr. Justice R.S.Madan.

Present: Shri Sachin Mittal, Advocate, for the appellant.

R.S.Madan, J (Oral)

After making two unsuccessful attempts before the trial court as well as before the first appellate court, the appellant has again knocked the doors of this Court by filing this regular second appeal.

The plaintiff-respondent has filed a suit for specific performance on the broad averments that the defendant-appellant claims herself to be owner of House No. 3862 situated in Kacha Bazar, Sadar Bazar, Ambala Cantt. and she offered to sell one store out of that house fully described in para No.2 of the judgment of the trial court, for an ostensible consideration of Rs. 85,000/-. The plaintiff-respondent accepted the offer and executed the agreement to sell on May 07, 2001. As per the agreement, the plaintiff paid an amount of Rs. 5000/- as earnest money and fixed the date for execution of the sale deed on July 30, 2001. It is alleged that before the expiry of the date of execution of the sale deed, after serving a notice the plaintiff-respondent intimated the defendant-appellant that he was ready with the balance sale consideration and

registration charges, for getting the sale deed executed. Through the said notice, the defendant-respondent requested the defendant-appellant to reach the office of Sub Registrar, Ambala Cantonment but she did not turn up, which led to the filing of the suit for specific performance.

The aforesaid suit was resisted by the defendant-appellant by filing written statement inter-alia pleading therein that the defendant-appellant is not the absolute owner of the suit property and that she could not part with any part of the suit property without the consent of other co-sharers. It was pleaded that the house out of which the part of the property has been sold was owned by Smt. Kasturi Devi, mother-in-law of the appellant, who had purchased the same vide agreement to sell dated 6.1.1967. After the death of said Kasturi Devi, the property was inherited by Shri Sarwan Kumar, the husband of the appellant by virtue of Will dated 20.3.1990 and after the death of Sarwan Kumar in 1993, the appellant along with her two sons and two daughters have become the owner in possession of the property in dispute. It is further pleaded that the defendant-appellant is not the absolute owner of the house in question and that she was not competent to sell the same. She has further pleaded that she has not received an amount of Rs. 5000/- from the plaintiff as earnest money and that the plaintiff had obtained her signatures on some blank papers and converted the same into an agreement to sell by playing fraud upon the defendant.

In the replication, the pleas taken by the defendant-appellant were controverted and those taken in the plaint were reiterated.

The learned trial court after going through the pleadings of the parties, framed four issues and recorded the evidence of the respective parties.

After hearing the learned counsel for the parties and appreciating the oral as well as documentary evidence brought on the

record by the respective parties, returned the findings on all the issues in favour of the plaintiff and against the defendant.

Aggrieved by the impugned judgment and decree of the learned trial Court, the defendant-appellant filed an appeal before the court of learned Additional District Judge, Ambala, who after hearing the learned counsel for the parties, affirmed the findings of the trial court on all the issues and dismissed the appeal.

Aggrieved by the judgment and decree of the 1st Appellate Court, the defendant-appellant has preferred this appeal before this Court.

The learned counsel for the appellant contended that the property in question is ancestral property but the learned Trial Court has ignored this aspect of the case as well as that there are other co-sharers of the property in dispute. The defendant-appellant could not sell the portion of the property in dispute without the consent of the other co-sharers. Hence, the two courts below have ignored this fact and decreed the suit of the plaintiff for specific performance of the contract.

The learned counsel for the appellant could not point out as to how the judgments and decrees of the learned trial court and that of the 1st Appellate Court suffer from any patent infirmity or arbitrariness. No substantial question of law is involved in this appeal. The case is based on facts, which have already been appreciated by both the courts below. Neither any plea was set up nor any evidence was led by the defendant/appellant to prove that the suit property is coparcenary and ancestral property.

In view of the concurrent findings of fact recorded by the two courts below, I find no merits in this appeal. The same is accordingly dismissed.

September 17, 2007.
Malik

(R.S.Madan)
Judge

FAO No. 63 of 1989.

Present: Shri Sushant Maini, Deputy Advocate General,
Punjab, for the appellant.

Shri Arvind Mittal, Advocate, for the respondents.

Learned counsel for the parties stated at the Bar that in view of the amendment in the Punjab Courts Act, 2006 , all the appeals from a decree or order of a Civil Judge (Senior Division) and Civil Judge (Junior Division) pending in the High Court, irrespective of the value of the original suit, shall be transferred to the District Judge exercising ordinary territorial jurisdiction.

In this view of the matter, the case is transferred to the learned District Judge, Ropar, for proceeding further in accordance with the law.

The parties through their counsel are directed to appear before the learned District Judge, Ropar on October 15, 2007.

September 17, 2007.
Malik

(R.S.Madan)
Judge